

STANDING ORDER 2-09
APPLICATION OF G. L. c. 190B, ARTICLE V
TO GUARDIANSHIP AND/OR CONSERVATORSHIP CASES
PENDING ON JULY 1, 2009 OR WITH A DECREE ISSUED PRIOR THERETO

On July 1, 2009, certain provisions of the Massachusetts Uniform Probate Code, G. L. c. 190B (“the Code”), become effective. The provisions are primarily contained in Article V of the Code, Protection of Persons under Disability and Their Property. The Code significantly reforms the practice of Guardianship and Conservatorship law. The Probate and Family Court interprets the Massachusetts Uniform Probate Code to apply to any Guardianship and Conservatorship case:

- (a) pending on July 1, 2009 without a permanent decree having entered;
- (b) where a permanent decree has previously entered and the Guardianship or Conservatorship has not terminated; or
- (c) commenced on or after July 1, 2009.

Accordingly:

1. PENDING CASES WITH NO PERMANENT DECREE

Any Petition for Guardianship of the person and/or estate or Conservatorship filed prior to and pending as of July 1, 2009 generally does not need to be amended. If the petitioner seeks authority to admit the alleged incapacitated person to a nursing facility and such authorization was not explicitly requested on the petition, the petition must be amended to include a request for such authorization and a new citation must issue.

Any citation issued before July 1, 2009 shall be accepted by the Court after July 1, 2009 as sufficient even if the return date is after July 1, 2009. Any citation issued after July 1, 2009 must be served in accordance with the notice requirements of the applicable MUPC sections.

Any Petition for Guardianship of the person and/or estate or Conservatorship filed prior to and pending as of July 1, 2009 must be accompanied by the new Medical Certificate or Clinical Team Report form.

Any Petition requesting the appointment of a Guardian of the estate pending as of July 1, 2009 shall be treated as a Petition for the Appointment of a Conservator. At the time of allowance, an Order and Decree of Appointment of Conservator shall be issued (in addition to an Order and Decree of Appointment of Guardian if appointment of a Guardian of the person was also requested) and docketed in a Conservator file. The Conservator case file shall include a copy of the Petition for Guardianship docket sheet up to the time of appointment. There shall be no fee charged when a new Conservator case initiation is required. Thereafter, the Conservator shall file any and all required Financial Plan, Inventory and Accounts in the Conservator file.

2. CASES WHERE A GUARDIAN OF THE PERSON AND/OR ESTATE OR A CONSERVATOR WAS APPOINTED PRIOR TO JULY 1, 2009

a. Issuance of Letters of Appointment.

When any party seeks a certified copy of the Decree appointing the Guardian of the person, a Letter of Appointment of Guardian shall be issued in accordance with the prior Decree and the Code.

When any party seeks a certified copy of the Decree appointing the Guardian of the estate or the Conservator, a Letter of Appointment of Conservator shall be issued indicating all powers vested in the Conservator in accordance with the prior Decree and the Code and a new Conservator file opened.

The Letter of Conservatorship shall be placed in the new case file. The new case file shall include a copy of the Petition for Guardianship docket sheet up to the time of the issuance of the Letter of Conservatorship. There shall be no fee charged if a new Conservator case initiation is required.

b. Reporting Requirements

Guardians of Incapacitated Persons are required to file a Care Plan/Report within 60 days following their appointment. All Guardians of Incapacitated Persons and Guardians of Wards, regardless of the date of appointment, must file a Report annually thereafter. G. L. c. 190B, § 5-309(b). Whenever any Guardian of the person is before the Court, the Court shall insure the timely filing and review of any and all Care Plans/Reports. If Care Plans/Reports have not been filed, the Court shall order the filing of a Care Plan/Report.

A Conservator may be required to file a Conservator Financial Plan for managing, expending and distributing the assets of the estate. G. L. c. 190B, § 5-416(c). Whenever any Guardian of the estate or Conservator is before the Court, the Court may order the filing of a Conservator Financial Plan.

c. Accounting Requirements

Any Guardian of the estate or Conservator is subject to the accounting requirements of G. L. c. 190B, § 5-418 of the Code. Whenever any Guardian of the estate or Conservator is before the Court, the Court shall insure the timely filing and review of any and all required Inventory and Accounts.

d. Nursing Facility Admissions

Any nursing facility admission made by a Guardian before July 1, 2009 shall continue to be considered a valid admission after July 1, 2009 without the need for further Court authorization. If the incapacitated person is temporarily hospitalized, the Guardian may readmit the incapacitated person to the nursing facility the incapacitated person was in immediately before being hospitalized, without further authorization, notwithstanding the fact that this admission may

be considered a new admission due to the length of hospitalization and/or loss of the prior bed. However, if the incapacitated person is being admitted to a nursing facility other than one the incapacitated person was in immediately before being hospitalized or, if it is a first-time admission after July 1, 2009, Court authorization for admission must be sought by the filing of a General Petition.

e. Previous Authority to Admit/Commit

Beginning July 1, 2009, the Probate and Family Court no longer has the authority to authorize a Guardian to admit or commit an incapacitated person to a mental health facility or a mental retardation facility as defined in the regulations of the department of mental health. G. L. c. 190B, § 5-309(f). In addition, beginning July 1, 2009, the Probate and Family Court will no longer have the authority to review or extend an admit/commit order previously authorized by the Court. An initial commitment order is generally valid for six months, and subsequent commitment orders are valid for one year. G. L. c. 123, § 8(d). Guardianship of Weedon, 409 Mass. 196 (1991).

If the authority to admit/commit is in an existing decree allowed before July 1, 2009, but the incapacitated person is not admitted/committed before July 1, 2009, this authority shall be considered to have expired on July 1, 2009 and the authority to admit/commit may not be relied upon after July 1, 2009. A new order must be sought through the appropriate District Court proceeding. If the authority to admit/commit is in an existing decree allowed before July 1, 2009, and the incapacitated person is admitted/committed before July 1, 2009, this authority shall continue to be valid, but will expire six months after the date of admission/commitment.

If the authority to admit/commit issued before July 1, 2009 has expired, it cannot be relied upon nor can the Probate and Family Court review or extend the prior authorization. Any such order must now be sought through the appropriate District Court proceeding.

3. STANDBY OR EMERGENCY GUARDIANSHIP PROXY

The current provisions of G. L. c. 201, § 2(A)-(H) regarding Standby or Emergency Guardianship Proxies will be repealed as of July 1, 2009. Under G. L. c. 190B, § 5-202(a) and (b), a parent or a current Guardian may appoint a Guardian for any minor child in a writing that must be attested to by at least two witnesses. This requirement is similar to the requirements of G. L. c. 201, § 2B, which provides that the standby Guardianship proxy must be in writing, designate an adult and be "witnessed by two or more persons, at least eighteen years of age, neither of whom is to be designated as the proxy." Therefore, the Court shall deem designations executed in accordance with G. L. c. 201, § 2B valid parental or Guardian appointments under G. L. c. 190B, § 5-202 regardless of the date of execution.